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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,652	07/30/2003	Urban C. Hirschey	129P016	8264
7590 06/16/2005 HANCOCK & ESTABROOK, LLP 1500 MONY Tower 1 P. O. Box 4976 Syracuse, NY 13221-4976			EXAMINER ELKINS, GARY E	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/630,652

Applicant(s)

HIRSCHEY, URBAN C.

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 5-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20030730.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of the embodiment of figs. 1-4 in the reply filed on 13 April 2005 is acknowledged. The response is considered without traverse of the election of species requirement insofar as the argument that particular claims are generic is not an argument directed at the propriety of the requirement, i.e. whether generic claims are present or not does not address the propriety of the requirement itself. It is not agreed that claims 1 and 16 are generic claims. The fact that claims 1 and 16 read upon both disclosed embodiments is not conclusive that they are generic to both species (see MPEP 806.04(d)). Claims 1 and 16 are subcombination claims common to the disclosed species since they include common elements but omit other elements. See the dependent claims where additional elements are being set forth. It is noted, however, that the requirement will be withdrawn with respect to any claim which is dependent upon or otherwise includes all the allowable limitations of any claim which may be found allowable

### ***Drawings***

2. Fig. 5 is objected to under MPEP 806.02 and 37 CFR 1.84. Photographs or photomicrographs are not ordinarily permitted in utility patent applications. Photographs or photomicrographs are only acceptable as final drawings, in lieu of India ink drawings, to illustrate inventions which are incapable of being accurately or adequately depicted by India ink drawings and must show the invention more clearly than can be done by India ink drawings. Since the invention shown in these figures is considered to be clearly capable of being illustrated by India ink drawings, and since no showing has been made with respect to any inability to

Art Unit: 3727

accurately or adequately depict the invention using India ink drawings, the photographs or photomicrographs are not acceptable as final drawings.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two-piece blank where the container and shelf panel are formed from the single blank as set forth in claims 10-15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. Claims 10-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not

Art Unit: 3727

described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. On page 2 of the specification, paragraph 7 and in claims 10-15, a single blank which is cut to define two pieces is described. However, it is unclear how the single piece blank which apparently is cut to make the two blanks as shown in figs. 1 and 2 is constructed. The only detailed description within the application is describing the two separate blanks rather than one.

5. Claims 10-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not enable one of ordinary skill in this art to make a single blank which is apparently cut to subsequently form the blanks shown in figs. 1 and 2.

6. Claims 1, 2 and 5-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 10 and 11 and claim 6, lines 2 and 3, "when said glue flap is affixed..." and "when said reinforcing flaps are folded..." render the claims unclear with respect to what is being claimed. The preambles indicate that a box is claimed. However, the above phrases imply that the claimed box is not yet formed or not yet completely formed.

In claim 2, it is unclear how cutouts or openings have locking tabs. It would appear that the locking tabs 38, 42, as disclosed, are formed on the upper portion of the roof away from the handle openings 46, 48.

Art Unit: 3727

Claims 10-15 are unclear for the same reasons as set forth in paragraphs 3-5 above.

In claim 11, line 4, "are" is grammatically unclear.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by either Fultz or Cooke.

Each of Fultz and Cooke discloses a box including a shelf (114; F) a glue flap (110; F') and a support flap (118; F') as claimed.

9. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Gordon et al or Frankenstein (fig. 1 emb). Each of Gordon et al and Frankenstein discloses a box including a shelf (24; 60) a glue flap (26; 59 or 61), a support flap (22; 59 or 61) and two reinforcing flaps (46, 48; 69, 70) as claimed.

10. Claims 1, 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by either Roccaforte or Frasch. Each of Roccaforte and Frasch discloses a box including a shelf (54; 25) a glue flap (60; 28), a support flap (56; 26), two reinforcing flaps (58, 62; 28, 28) and a cut hole (55; 30) within the shelf panel as claimed.

11. Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by any one of Fultz, Cooke, Gordon et al, Frankenstein, Roccaforte, Frasch, Redemski or Thoke. Each of Fultz, Cooke, Gordon et al, Frankenstein, Roccaforte, Frasch, Redemski and Thoke discloses a horizontal shelf integrally connected to an outer box shell via a dividing line formed by a foldline

or bending line connecting the shelf to an adjacent flap which is connected to the outer box insofar as claimed.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Frankenstein (fig. 1 emb) or Cooke, each in view of Collie, Yocum or Evans. Each of Frankenstein and Cooke discloses all structure of the claimed box except a pitched roof with a handle handle panels with locking tabs. Each of Collie, Yocum and Evans teaches that it is known to make the top of a box with a pitched roof with handle panels secured by locking tabs on the handle panels. It would have been obvious to make the box in either Frankenstein or Cooke with a top as taught by any one of Collie, Yocum or Evans to allow the box to be easily carried and positively secured.

14. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Frankenstein or Gordon et al, each in view of any one of Kent et al, Knutsson-Hall or Nagle. Each of Frankenstein and Gordon et al discloses all structure of the claimed box except connection of the reinforcing flaps to the shelf panel using cut score lines. Each of Kent et al, Knutsson-Hall and Nagle teaches that it is known to form the score lines in boxes using cut score lines to make the score lines easier to fold and retain in position. It would have been obvious to make the score lines in either Frankenstein or Gordon et al using cut score lines as taught by any one of Kent et

Art Unit: 3727

al, Knutsson-Hall or Nagle to facilitate easier folding of the material and to present stress failure along the folds. Cut score lines are well known in this art.

15. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Fultz, Gordon et al, Roccaforte, Frankenstein, Frasch or Cooke, each in view of Blank et al. Each of Fultz, Gordon et al, Roccaforte, Frankenstein, Frasch and Cooke discloses all structure of the claimed box except a handle assembly connected to the box. Blank et al teaches that it is known to provide a box with a handle assembly E connected to a box to facilitate carrying the box with one hand. It would have been obvious to make the box in any one of Fultz, Gordon et al, Roccaforte, Frankenstein, Frasch or Cooke with a handle assembly as taught by Blank et al to allow the box to more easily be carried.

16. Claim 10-12, 14 and 15, as best understood in view of paragraphs 3-6 above, are rejected under 35 U.S.C. 103(a) as being unpatentable over Redemski (fig. 8 emb) in view of any one of Kent et al, Knutsson-Hall or Nagle. Redemski discloses a box formed from a pair of blanks where the first blank includes side and end panels (1a), a first flap capable of being glued (as depicted in figs. 2 and 3) and bottom flaps (1b and see fig. 4). The second blank as depicted in fig. 8 includes a shelf panel (6a), a second flap (6b) capable of being glued, a shelf flap (6b), reinforcing flaps (6b, 6b) and a hole (6d). Redemski does not disclose connection of the reinforcing flaps and shelf flap to the shelf panel using cut score lines. Each of Kent et al, Knutsson-Hall and Nagle teaches that it is known to form the score lines in boxes using cut score lines to make the score lines easier to fold and retain in position. It would have been obvious to make the score lines in Redemski using cut score lines as taught by any one of Kent et al, Knutsson-Hall or Nagle to facilitate easier folding of the material and to present stress failure



Art Unit: 3727

along the folds. Cut score lines are well known in this art. It is noted that no distinction is seen between the blanks being claimed and those evidenced by Redemski as a result of the intended use of the flaps to be glued, i.e. the flaps are considered capable of being glued as claimed.

17. Claims 10-12, 14 and 15, as best understood in view of paragraphs 3-6 above, are rejected under 35 U.S.C. 103(a) as being unpatentable over Thoke in view of any one of Kent et al, Knutsson-Hall or Nagel, and either Redemski or Montealegre. Thoke discloses a box formed from a pair of blanks where the first blank includes side and end panels (10), and bottom flaps (11). Thoke discloses a second blank including a shelf panel (21), a second flap (22) capable of being glued, a shelf flap (22), reinforcing flaps (22, 22) and a hole (26). Thoke does not disclose connection of the reinforcing flaps and shelf flap to the shelf panel using cut score lines or a first flap on the first blank which is capable of being glued. Each of Kent et al, Knutsson-Hall and Nagle teaches that it is known to form the score lines in boxes using cut score lines to make the score lines easier to fold and retain in position. Each of Redemski and Montealegre teaches that it is known to make a tubular blank with a manufacturer's flap (see figs. 2 and 3; 34, respectively) capable of being glued to secure the walls when the box is formed. It would have been obvious to make the score lines in Thoke using cut score lines as taught by any one of Kent et al, Knutsson-Hall or Nagle to facilitate easier folding of the material and to prevent stress failure along the folds. Cut score lines are well known in this art. It would further have been obvious to make the first blank in Thoke with a first flap or manufacturer's flap as taught by either Redemski or Montealegre to form the seam integrally with the container as opposed to using tape or other well known expedient to secure the walls together. It is noted that no distinction is seen between the blanks being claimed and those evidenced by Thoke as a result of

Art Unit: 3727

the intended use of the flaps to be glued, i.e. the flaps are considered capable of being glued as claimed.

18. Claim 13, as best understood in view of paragraphs 3-6 above, is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 10 in either paragraph 16 or 17 above, and further in view of Oman and Collie. Each of modified Redemski and Thoke evidences all structure of the claimed blank except handle portions, side cover panels, end cover panels, holes and tabs as specifically set forth in claim 13. Oman teaches that it is known to make the top of a box with handle portions (44, 45), side cover panels (32, 33), end cover panels (38, 39), holes (42, 43, 47, 48) and tabs (55-58). Collie teaches that it is known to locate hand holes (20) along the foldlines between side cover panels (16) and handle portions (18). It would have been obvious to make the top of the box in either Redemski or Thoke as taught by Oman to allow easy carrying of the container by one hand while maintaining the top closed and to allow easy opening of the container. It would further have been obvious to locate the handholes along the foldlines between the side cover panels and the handle portions in modified Redemski or Thoke as taught by Collie to provide additional material above the hand and to make the handle portions easier to fold.

#### *Allowable Subject Matter*

19. Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

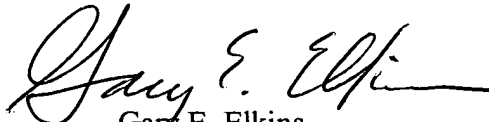
The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727